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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/802,837
Filing Date: March 18, 2004
Appellant(s): IGUCHI ET AL.

Alan J. Kasper (Reg. No. 25,426)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 9, 2009 appealing from the Office action mailed March 18, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

A.) The rejection of Claims 1-15 and 17-26 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

B.) The rejection of Claims 1-15 and 17-26 under 35 U.S.C. 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

With the exception of the above noted grounds of rejection, The Examiner is in agreement with Applicants stated grounds of rejection to be reviewed on Appeal as set forth on page 17, § VI., of the Appeal Brief dated February 27, 2009.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,738,701	IKEUCHI	4-1998
1,853,002	HOWARD	4-1932

YOSHIKUNI, K., TOUMA, Y., IGUCHI, Y., "Method of Manufacturing Glass Gobs, Glass Gob Molding Device, Methods of Manufacturing Molded Glass Articles, and Method of Manufacturing Optical Elements", US 2003/0000252 A1, (Filed: April 30, 2002, Published: Jan 2, 2003)

MURAKAMI, A., UTSUGI, K., IGUCHI, Y., YOSHIDA, M., SHINKUMA, Y., WATABE, A., "Process for the Production of Glass Article and Optical Device", US 2003/0132628 A1, (Filed: Dec. 12, 2002, Published: Jul. 17, 2003)

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

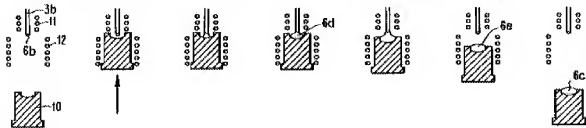
Claims 1-7, 11-15, and 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (US 1,853,002) in view of Ikeuchi (US 5,738,701) and Yoshikuni (US 2003/0000252 A1). Since the Yoshikuni pre-grant publication has a publication date more than 12 months prior to Applicants filing date, said publication is properly applied under 35 U.S.C. 103(a) as prior art even though both the reference and the instant application share a common assignment to Hoya Corporation.

As a preliminary note in response to Applicants recently submitted claim amendments, Applicant is advised that the method of press molding a glass preform into final form is understood to be acknowledged by Applicant as old and well known in the art. Specifically, Applicant's specification (§¶[0002]) states in part that "the method of heat softening a glass article ... known as a preform, and press molding it in a pressing mold is widely employed". It is therefore understood by the Examiner that Applicants invention is directed towards the fabrication of the preform and not per se to the

subsequent reshaping or press molding of the preform to final form which Applicant appears to acknowledge as admitted prior art. It follows that the limitations in independent **claims 14, 15, 20, and 22-26** which recite steps of heat softening a glass preform and press molding said heat softened glass preform would be recognized as old and well known to one of ordinary skill in the art at the time of the invention.

With particular respect to **Claims 1, 2, 3, 5, 6, 7, and 15**, the Ikeuchi reference discloses a method for separating glass gobs which teaches nearly every element of the glass gob formation as set forth in Applicants claimed invention (see Figure 4 excerpt below). Specifically, the method comprises moving a support member to approach the front end of the nozzle (3b) (Figures 4a – 4b) and receiving a glass melt flow from a nozzle (3a or 3b) onto a support (10) (figure 4c). As set forth in the disclosure, the support is either intermittently or continuously lowered (fig 4d-4f) and when the glass retention ends, the support member is lowered at high speed to cut the glass (Fig 4g). During the lowering, a constriction is formed between the support and the nozzle (fig. 4e) which yields the breakpoint during the rapid lowering stage of the support (element 6d displayed in greater detail in figure 8).

FIG. 4a FIG. 4b FIG. 4c FIG. 4d FIG. 4e FIG. 4f FIG. 4g



With respect to **Claims 15 and 17**, it is asserted that from the time the gob is severed from the melt (fig 4g) through the reengagement of the support member to said melt (fig 4c) "contact between the support member and the lower end of the glass melt is "temporarily broken". Further with respect to **Claim 17**, Ikeuchi clearly indicates that the glass glob that has dripped is rendered spherical on the support member (column 4, lines 23-33). Now, the reference teaches that "The temperature of the crucible...is maintained at a predetermined temperature...(and) The temperature of the crucible and nozzle may be set in accordance with the characteristics of the glass and the size of the glass gob to be obtained insofar as the temperature is outside of the liquid phase temperature range (Column 3, lines 9-15).

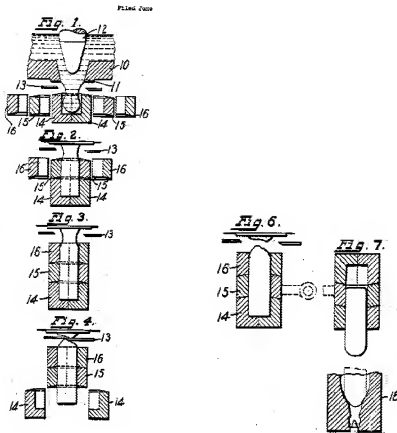
Although not explicitly disclosed in the Ikeuchi reference, it is the Examiners position that Applicants limitation set forth in **Claim 15** wherein "the support member is cooled by circulation of a coolant through the support member" is a merely trivial extension over the teachings set forth by Ikeuchi. Specifically, Ikeuchi teaches that it is important to maintain both the crucible and nozzle at predetermined temperatures dependent upon the desired gob size and character of the glass melt material. Further, the glass manufacturing arts provide a wealth of exemplary systems [See Yoshikuni (US 2003/0000252), Fig. 3 and Column 7, lines 17-35]] that incorporate a circulated fluid or gaseous flow to regulate the machine temperature profile. Although Ikeuchi may not explicitly point to a method of thermal regulation which makes use of the claimed coolant circulation, it is the Examiners position that such a modification would have been a readily evident alternative to one of ordinary skill in the art at the time of the

invention who was seeking to maintain the crucible "at a predetermined temperature" as taught in the instant reference.

Now with respect to each of the independent **Claims 1, 2, 3, 5, and 15**, Ikeuchi states that the instant method provides "defectless non-abrasive glass gobs" (Column 1, lines 45-47) and continues by stating that "The thus obtained glass gob, after cooling solidification may be press molded in a mold" (Column 5, lines 48-51). Since the glass gob is formed in "the support member" and subsequently shaped in "a mold" the Ikeuchi strongly implies a transferring step from said support member to said mold (e.g. glass forming member"). Ikeuchi however does not explicitly limit the details of this transfer step nor the timing of said transfer with respect to the forming step.

Howard (US 1,853,002) teaches the method of "suspended charge feeding" wherein a glass stream flowing continuously from a nozzle (11) is first discharged to a "supporting member" (14, 15, 16) followed by a concerted transfer step of the entire charge of glass material to a mold (18). As depicted in one preferred embodiment below in figures 6 to 7, the charge is inverted during the transfer process [**Claim 11**]. This "well known method" (Pg 1, lines 45-59) serves a materially equivalent purpose to the "support member" disclosed in the Ikeuchi process, namely to provide a glass gob free from the defects and distortions associated with direct feeding of the molten stream into a forming member.

The Howard process simply makes explicit the claimed process of transferring the glass gob from the support member (14, 15, 16) to a mold or "forming member" (18) for subsequent shaping into a glass article. The significant difference between the instant process and that of Ikeuchi is the use of sheers (13) to sever the charge from the flowing stream. This shearing operation is asserted by Howard to give rise to a deleterious "batting effect" or distortion which is circumvented by the Ikeuchi process. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the glass gob forming process taught by Ikeuchi in the glass forming operation taught by Howard. This would have been an obvious modification for one of ordinary skill seeking to avoid the "batting effect" caused by shearing operation of Howard.



The prior art of record teaches the claimed glass gob formation and transfer steps as claimed, however provide no explicit limitation upon the relative timing of the transfer process with respect to the duration of the gob formation process. Although the prior art may not provide an explicit limitation upon the process timing, it is accepted as a common goal of engineering practice to optimize product throughput in order to maximize process economics.

Alternately, Yoshikuni (US 2003/0000252) teaches that "the cast glass is subject to acceleration" during transfer of a gob to a receiving or "forming" mold in a process similar to that outlined by the Applicant. The reference further teaches (Fig. 3 and

Column 7, lines 17-35) that it is known to support the glass gobs on a gas film emitted through ports in the supporting surface [**Claims 12, 15, 21**]. More importantly, the reference indicates that equipment acceleration exerts a force upon the glass, deforming the glass and that "when the amount of deformation is significant, the distortion remains in the glass after it returns it original shape." Finally, the reference indicates that "the greater the acceleration exerted on the glass...the greater the tendency of the glass to distort" (Column 1, Lines 55-67).

Therefore, it is clear that a balance must be established between 1) high throughput which maximizes units per unit time but which simultaneously subjects the glass gobs to higher distorting forces, and 2) low production speed which minimizes gob distortion forces but compromises product throughput.

"[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation."; see *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation (See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) and *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977)). In the instant case, process timing gives rise to a tradeoff between product production rate and the gob distorting forces which decrease product quality. Therefore in the Applicants process, "the time during which the glass forming member is stopped for transfer of the glass gob from

the support member" is deemed a result-effective variable of the gob molding process. In view of the foregoing and absent any compelling and substantially unexpected results to the contrary, it is the Examiners express position that one having no more than an ordinary level of skill in the art at the time of the invention would have been fully capable of empirically optimizing relative timing of the process steps.

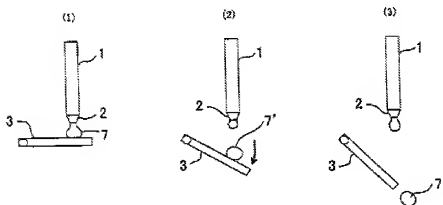
Claims 8, 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard (US 1,853,002), Ikeuchi (US 5,738,701), and Yoshikuni (US 2003/0000252 A1) as applied above and further in view of Murakami (US 2003/0131628 A1).

In summary, Ikeuchi teaches method of separating individual glass gobs from a glass melt which is continuously flowing from nozzle. Ikeuchi implicitly requires a transfer step of transferring the formed gob from the support member to a forming member, and the Howard reference renders this transfer explicit and further indicates that this process, generally termed "suspended charge feeding", is old and well known in the art. Neither of these references specifically limits the process timing, however it is the Examiners position absent, any compelling and unexpected results, that the claimed process timing would have been achieved through routine empirical optimization. Specifically with reference to the Yoshikuni disclosure, it would have been obvious to one of ordinary skill to seek a balance between

maximizing gob production rate while minimizing the distorting forces imparted to the softened glass gobs which result in decreased product quality.

Now claims 8, 9, 10 all relate to various permutations of the general design and operation of the support member. While the cited prior art is silent regarding these specific limitations, Murakami (US 2003/0131628 A1) teaches a variety of support members which read directly upon the claimed structure. With reference to the excerpt figure 2 below, the instant reference teaches a support member which is tilted to cause the glass gob to fall off.

FIG.2



Figures 3 and 4 teach support members which are rotated 360° to transfer a glass gob and wherein two consecutively produced glass gobs are received on two different surfaces of the support member.

FIG.3

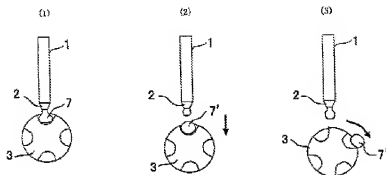
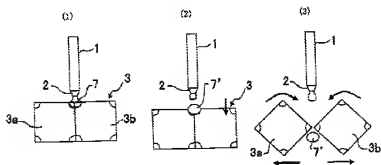


FIG.4



It would have been presented a merely obvious extension over the prior art teachings to substitute one or more of the functionally equivalent support members taught by the Murakami reference in place of the Ikeuchi support member.

(10) Response to Argument

Argument A.) Rejection of Claims 1-15 and 17-26 under 35 U.S.C., first paragraph as presented on pages 16-17 of the instant Appeal Brief

The above noted claims were rejected in the Official Action Dated March 18, 2008 (see page 3) for reciting the limitation; "forming the glass preform by moving at least one glass preform forming member while cooling the glass to form a solid glass preform". At issue is whether the Specification as originally filed provides adequate supporting basis for Applicant to claim "at least one glass preform forming member".

With respect to the rejection of claims 15-20, Applicant alleges that none of the noted claims recite the offensive limitation and that for at least this reason, the instant rejection should be withdrawn. Applicant's arguments with respect to this matter have been fully considered and are persuasive. The rejection of claims 15-20 under 35 U.S.C. §112, first paragraph has been withdrawn.

With respect to the rejection of claim 1-3, 5-7, 14, and 22-26, Applicant alleges that the originally filed claim recites "glass forming members" and that the instant claim language is consistent with the language of the original claims and the focus of the invention as stated in ¶[0001] of the originally filed Specification. With respect to the apparatus illustrated in Figure 1, Applicant alleges that it would be clear to one of ordinary skill in the art that the depicted apparatus may comprise a number of glass forming members.

Applicant's arguments with respect to this matter have been fully considered and are persuasive. The rejection of claims 1-14 and 22-26 under 35 U.S.C. §112, first paragraph has been withdrawn.

In view of the foregoing, the rejection of all claims under 35 U.S.C. §112, first paragraph, namely Claims 1-15 and 17-26, have been withdrawn, and as noted in section (6) above, the instant grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

Argument B.) Rejection of Claims 1-15 and 17-26 under 35 U.S.C., second paragraph as presented on pages 18-19 of the instant Appeal Brief

The above noted claims were rejected in the Official Action Dated March 18, 2008 (see pages 3-4) for reciting the limitation; “forming the glass preform by moving at least one glass preform forming member while cooling the glass to form a solid glass preform”. At issue is whether the Specification as originally filed provides adequate antecedent basis for the second instance of the recited limitation of “the glass” in the noted limitation. Further, the identified claims were rejected due to an apparent lacking nexus between the step of transferring the separated glass gob and the step of forming the glass preform.

With respect to the rejection of claims 15-20, Applicant alleges that none of the noted claims recite the offensive limitation of “the glass” and that for at least this reason, the instant rejection should be withdrawn. Applicant’s arguments with respect to this matter have been fully considered and are persuasive. The rejection of claims 15-20 under 35 U.S.C. §112, second paragraph has been withdrawn.

With respect to the rejection of claims 1-3, 5-7, 14, and 22-26 under 35 U.S.C. §112, second paragraph, Applicant alleges that the Examiner has truncated the relevant term from the phrase "the glass preform". In response, Applicant is advised that the limitation at issue is the second instance of the term "the glass" as recited in Claim 1, line 13. Although Applicant has apparently misconstrued the precise instance of the term at issue, it is the Examiners assessment upon further review that the noted objectionable term does in fact reasonably, and clearly refers to the glass of the glass preform and that the precise metes and bounds of the claimed invention are clearly conveyed by the instant claim language.

Regarding the noted lacking nexus between the transferring of the separated glass gob and the step of forming the glass preform, Applicant alleges that the sequence of steps as recited would not be ambiguous to one of ordinary skill in the art and that it is self-evident that the step of forming the glass preform is performed using the separated glass gob formed in the previous step.

Applicant's arguments with respect to this matter have been fully considered and are persuasive. The rejection of claims 1-3, 5-7, 14, and 22-26 under 35 U.S.C. §112, second paragraph has been withdrawn.

In view of the foregoing, the rejection of all claims under 35 U.S.C. §112, second paragraph, namely Claims 1-15 and 17-26, have been withdrawn, and as noted in section (6) above, the instant grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

Argument C.) Rejection of Claims 1-7, 11-12, 15, 17-18, and 21 under 35 U.S.C. §103(a) over Howard (US 1,853,002), Ikeuchi (US 5,738,701), and Yoshikuni (US 2003/0000252 A1) as presented on pages 19-34 of the instant Appeal Brief

Argument: Ikeuchi does not teach separate supporting and forming members and, since Howard requires separate supporting and forming members, one of ordinary skill would not combine Ikeuchi with Howard

Applicant alleges that the central feature of the instant application claims 1-3 is that the glass gob is moved from a preform support to a stopped preform forming member and that the timing of the transfer is "shorter than a gob preparation period".

With respect to the transfer step, Applicant acknowledges the Examiners stated assessment of the Ikeuchi reference, namely that the Ikeuchi reference "strongly implies a transferring step from a support member to a mold", however Applicant alleges that Ikeuchi does not teach a separate preform support and a separate forming member. Applicant further asserts that in the claimed invention, the support member and the glass preform forming member are separate parts while "Ikeuchi carries out both the supporting of a glass gob and the formation of a preform with a single supporting member" (see Appeal Brief, page 21, second paragraph).

Applicant thereby concludes that since Ikeuchi fails to teach a transfer step then Ikeuchi can not be used to draw any conclusion about the timing of such a transfer step (see Appeal Brief, page 22, second paragraph). Further, Applicant concludes that since

Howard teaches the use of separate supporting members and mold members to prepare a preform, "there would be no basis for one of ordinary skill to even consider the combination of Howard and Ikeuchi" (see Appeal Brief, page 23, second paragraph)

(I) Applicant has no basis to conclude that Ikeuchi teaches use of the same member for supporting and preform formation or that an arrangement employing separate supporting and forming members is precluded from the Ikeuchi process

In response to Applicants above assertion that "Ikeuchi teaches carrying out support and preform formation in a single supporting member", it is the Examiners assessment that Applicant has provided no substantive evidence in support the instant allegation. Further, Applicants allegations appears to run counter to the intent of the Ikeuchi reference as noted by the Examiner, namely that since Ikeuchi teaches that the formed gob is molded in a mold then Ikeuchi "strongly implies a transferring step from a support member to a mold". Regarding the latter issue, Applicant has failed to present any meaningful rebuttal to the Examiners stated assessment that a transfer step is in actuality strongly implied by the Ikeuchi teachings. Since Applicant has provided no convincing evidence in support of the instant allegations, it follows that said allegations are held to be mere conjecture and attorney argument.

The Official policy regarding Attorney argument is clearly outlined in MPEP §2145 [R-3];

"Attorney argument is not evidence unless it is an admission, in which case, an examiner may use the admission in making a rejection. See MPEP § 2129 and §

2144.03 for a discussion of admissions as prior art. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) ("An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness."). See MPEP § 716.01(c) for examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration.

(II) Applicants arguments are directed to Ikeuchi individually where the rejection is based upon the combined teachings to Ikeuchi, Howard, and Yoshikuni

In addition to the above noted deficiencies and to the extent that Applicant presents arguments alleging that Ikeuchi fails to teach a separate support member and a separate preform forming member, Applicant is respectfully advised that the instant arguments are directed against the Ikeuchi reference individually where the rejection is clearly based upon the combined teachings under 35 U.S.C. §103(a). Therefore, in response to applicant's arguments against the Ikeuchi reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

(III) Applicant has failed to present any reasoned basis to concluded that Ikeuchi is precluded from a combination with Howard in the manner stated

Now, to the extent that Applicant alleges that Ikeuchi could not be combined with Howard since Ikeuchi does not teach separate supporting and forming members, it is the Examiners assessment there is nothing in the Ikeuchi reference which would lead one of ordinary skill in the art to conclude that either that 1) separate supporting and formation member are in any manner excluded from the Ikeuchi process nor that 2) a step of transferring a gob from a supporting to a forming member is precluded.

Argument: Applicant alleges that Ikeuchi and Howard are directed to different stages of a molded glass body production process

Applicant alleges that the article prepared with supporting members in the Ikeuchi reference is a preform (see page 24, paragraph 2) and later states that the article prepared by supporting members 13-15 is a preform that will later be used to prepare a final product. Applicant subsequently restates this position indicating that “the preform prepared by the Ikeuchi supporting member corresponds to the product prepared with Howard’s supporting members 13-15”. Applicant alleges that Howard’s supporting members transfer a preform and not a glass gob. Applicant thereby concludes since that the mold in Howard shapes a preform into a product, then Howard could not be combined with Ikeuchi to form a glass gob into a preform.

(IV) Applicants argument purporting a distinction between a glass preform and a glass gob constitutes a distinction without a substantive difference

In the instant argument, Applicant apparently purports a distinction between a glass gob and a glass preform, however no such distinction is readily evident to the Examiner particularly when viewed in the broadest reasonable construction of the terms. That is, the glass body prepared by the Ikeuchi support and the glass body prepared by the Howard support appear on their face to constitute analogous preliminarily shaped masses of molten glass which shaped masses are respectively intended for subsequent shaping to a final product form. To the extent that Applicant alleges a difference between these glass bodies, Applicant is advised that no clear distinction has been made of record and indeed it is not evident that such a distinction even exists. Stated alternately, the Examiner can construe of no necessary and substantive distinction between the recited glass "preform" and the recited glass "gob", and in the broadest reasonable construction of the claim language these terms would appear on their face to be substantially interchangeable.

It therefore follows that Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Argument: the stopped period for transferring a glass gob from the support member to the forming member does not affect production rate and would not be subject to routine optimization

With respect to the claim limitations directed to the timing of the gob formation and transfer steps, Applicant acknowledges the Examiners conclusion that timing is subject to routine optimization in order to optimize process economics. With respect to this matter, Applicant was advised on pages 10-11 in the Official Action dated March 18, 2008 that it is a routine endeavor in the process engineering arts to seek enhanced product production rates thereby providing a skilled artisan with a motivation to minimize the period of time during the transfer of a gob to a receiving or forming mold. Applicant was further advised that Yoshikuni teaches that as the transfer period is shortened, the acceleration forces exerted by the equipment upon the glass increase leading to irreversible distortion in the formed glass gob.

Since Yoshikuni demonstrates both that 1) the relationship between transfer period and gob distortion forces was well documented at the time of the invention and that 2) the transfer timing has a predictable effect on distortion in the glass gob, Applicant was advised that the transfer timing would have reasonably been viewed as a result effective variable subject to routine process optimization. Applicant was further advised that a skilled technician would have reasonably derived Applicants recited process timing(e.g. the period during which the preform forming member is stopped for transfer of the glass gob from the support member to the preform forming member), through no more than routine experimentation and optimization of the collective prior art of record.

Applicant however alleges that the purpose for shortening the period during which the preform forming member is stopped for transfer of the glass gob from the support member to the preform forming member is "for specific technical reasons which are understood by considering the rate of production and the goal of high quality production of preforms". Applicant also categorically states that the stopped period "is not based on an improvement of product production rate" (page 25) and that the stopped period "does not affect the product production rate" (page 26).

Applicant then largely reiterates the very teachings set forth in Yoshikuni by stating that the period during which the preform forming member is stopped for transfer of the glass gob from the support member to the preform forming member ...is directed to suppressing the distortion of a glass gob by a reduction of the acceleration of a preform forming member". Applicant asserts that "the period during which the forming member is stopped for transfer ... does not affect the product production rate" (page 26, middle paragraph). Applicant then asserts that since other factors may also affect product production rate (e.g. glass flow rate) then one of ordinary skill would not view the period during which the forming member is stopped as subject to process optimization.

(V) Applicants categorical statement that the stopped period "does not affect the production rate" is without merit on its face

To the Extent that Applicant alleges that the stopped period for transfer influences only distortion of the glass gob but not the production rate, Applicant is

advised that this position appears to be flawed on its face. Take for illustrative example the extraordinary case wherein the transfer period is progressively extended to infinite time. Under such an illustrative scenario, the rate of production would be clearly diminished and ultimately effectively terminated by a progressively extending stopped period for transfer. Although the foregoing example is offered as an illustrative exercise, it clearly underscores the Examiners position that the period for transfer would be construed as one of the process variables which impacts the rate of production. At the very least, Applicants assertion that the period during which the forming member is stopped for transfer "does not affect the production rate" is held to be without merit.

It follows that Applicants categorical statement that the stopped period "does not affect the production rate" is not supported by any evidence on the record. Since Applicant has provided no conclusive evidence in support of the instant allegations, it follows that said allegations are held to be mere conjecture and attorney argument.

(VI) the existence of other process variables which may also affect production rate is not proof that the stopped rate "does not affect production rate" nor does it prove that the stopped period is excluded from process optimization.

Further, to the extent that Applicant alleges that other factors or process variables may influence the rate of production, Applicant is advised that such an observation does not detract from the fact that one of ordinary skill would likewise view the stopped period as subject to process optimization in the manner set forth by the Examiner. More significantly, the fact that Applicant substantially reiterates the same

relationship between gob transfer period and gob distortion forces as set forth in the prior art reference to Yoshikuni demonstrates that Applicants preferred process timing was reasonably derived in accordance with the known and previously documented result effective relationship set forth by at least Yoshikuni.

Argument: Applicant alleges that Ikeuchi fails to teach the gob forming method as disclosed in Applicants Specification

With respect to the rejection of claim 15, Applicant states that claim 15 requires the following steps (see page 31-32):

- 1) prior to dripping from the nozzle, the glass melt flowing out is brought into contact with a support member beneath the lower end of the glass melt flowing out of the nozzle
- 2) The support member is then moved downward from beneath the lower end of the glass melt at a speed greater than the flow speed of the glass melt,
- 3) contact is temporarily broken between the support member and the lower end of the glass melt "prior to finally being deposited on the support member" as explained at pages 32-36 with respect to figs. 5a-c and at page 43.
- 4) causing a glass gob of prescribed weight to drip onto the support member from the nozzle

Applicant alleges that "a significant difference (between the prior art and the disclosed process) is that the support member 2 is moved downward in such a manner that contact between the support member and the lower end of the glass melt is

temporarily broken prior to being finally deposited on the support member" (page 32). Applicant further alleges that the thus disclosed process is clearly different from the prior art.

(VII) Applicants arguments are directed to features which are not claimed

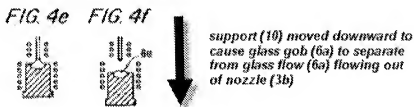
Applicants arguments regarding Applicants *disclosed* [emphasis added] gob forming method have been carefully considered, however it is the Examiners assessment that that the process as set forth in the Ikeuchi reference appropriately reads upon the gob forming method as recited in the instant claim language. Specifically, Applicant was advised that in the march 18, 2008 Official Action that from the time the gob is severed from the melt (fig 4g) through the reengagement of the support member to said melt (fig 4c), contact between the lower end of the glass melt and the support would be properly construed as "temporarily broken".

More specifically and with respect to the first recited step of claim 15, Applicant was advised that Ikeuchi teaches bringing the glass melt flowing out (6d) into contact with a support member (10) beneath a lower end of the glass melt flowing out of the nozzle prior to dripping from the nozzle (see the following excerpt figure 4e).

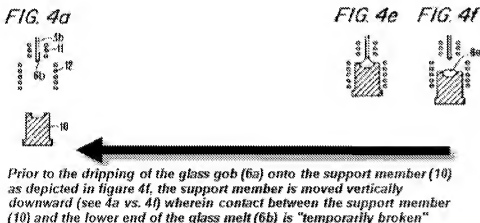
FIG. 4d FIG. 4e



Applicant was further advised that the support member was then moved downward from beneath the lower end of the glass melt at a speed greater than the flow speed of the glass melt, causing a glass gob of prescribed weight to drip onto the support member from the nozzle (see figure 4f)



Prior to the dripping of the glass gob onto the support member as depicted in figure 4f, the support member is moved downward (see figure 4a) in such a manner that contact is temporarily broken between the support member (10) and the lower end of the glass melt (6b). Specifically, 4a depicts a point in the process prior to the dripping off of the glass gob onto the support member such as depicted in figure 4f. Applicant was advised on page 6 of the Official Action dated March 18, 2008 the support member has clearly been moved downward in such a manner that contact between the glass melt (6b) in nozzle (3b) has been "temporarily broken".



In view of the foregoing, it remains the Examiners assessment that the process as disclosed in the Ikeuchi reference appropriately reads upon Applicants claimed invention as recited in currently pending claim 15. In response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., contact is temporarily broken between the support member and the lower end of the glass melt "prior to finally being deposited on the support member" and "during the moving step" as explained at pages 32-36 with respect to figs. 5a-c and at page 43) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jason L Lazorcik/

Examiner, Art Unit 1791

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